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May 7

CONCORD, N.H.

Mr. John O. Morton, Deputy Commissioner,
Department of Public Works and Highways

Att'n: Mr. Stanton C. Otis,
Secondary Roads Engineer

Dear Sir:

You have inquired whether it is permissible for a town to advance the full cost of work to be done under the provisions of R.L., c. 90, Part 13, s. 2, reimbursement to the town of the state's share to be made after July 1. I have read the letter written by the Selectmen of the Town of Northwood to Mr. Gillis, dated April 23, 1952, explaining the desirability of performance of the work as soon as possible and before the first of July. It is my opinion that the procedure proposed by the town is not authorized by the statute, and that the State is not authorized to make reimbursement to the town after July 1.

The effect of the proposed procedure is to make the Commissioner trustee of funds which he is not specially authorized to possess. The effect also is that the town makes to the state an unauthorized loan or advance. Between the date when the funds would be advanced under the proposal and the date when the apportionment would be paid by the state, the town funds would be depleted in excess of the permissible amount to the extent of the unauthorized payment.

Furthermore, section 7 of Part 13 provides that the contribution of the town and the amount apportioned by the Commissioner shall constitute a joint fund, to be expended under the supervision of and in accordance with specifications furnished by the Commissioner, which I understand to be for the actual expense of the project. However, the proposed procedure would result in the Commissioner making payment of the apportionment to the town, as noted above.

Finally, the effect of the proposal is to accelerate the project, so far as the state's contribution goes, from one fiscal year to the next preceding fiscal year, such acceleration being made possible by

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a loan to be made by the town to the state.

While recognizing the considerations which prompt applications by the towns for such procedure, it is my opinion that the proposed procedure should be avoided in favor of strict compliance with the statute.

Very truly yours,

Maurice M. Blodgett
Deputy Attorney General

MMB:HP